IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Volker Fricke et al.
Application No.: 10/552,230
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Title: METHOD AND SYSTEM FOR DATA LOGGING

Group Art Unit: 2457 / Conf. # 6714
Examiner: Rubin, Blake J.
Docket No.: GB920030029US1

Commissioner for Patents
P.O. Box 1450
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BRIEF OF APPELLANT

This Appeal Brief, pursuant to the Notice of Appeal filed January 21, 2009, is an appeal from the rejection of the Examiner in the Final Office Action dated October 21, 2008.

REAL PARTY IN INTEREST

International Business Machines, Inc. is the real party in interest.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 13 and 17-20 are rejected. Claims 1-12, 14-16 and 21-36 are cancelled. This Brief is in support of an appeal from the rejection of claims 13 and 17-20.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 13 - INDEPENDENT

The present invention provides a data logging method that utilizes a schedule of data transfer periods during which data is transferred from a plurality of devices (100A, 100B, ...) to a server (300) over a network (see specification, page 2, lines 16-20; FIG. 1).

The server obtains, from a first device of the plurality of devices, a communication of an actual data transfer size of data actually stored in the first device (see specification, page 7, lines 20-21; step 512 of Figure 4).

The server estimates a corresponding future data transfer size of the data actually stored in the first device; the estimating being based on a historic data transfer size for data previously transferred from the first device to the server over the network (see specification, page 7, lines 5-7; step 504 of Figure 4). The schedule is currently based on the historic data transfer size for the first device (see specification, page 8, lines 35 - 38)

The server determines that a difference exists between the actual data transfer size and the corresponding estimated future data transfer size and responsive to determining that the difference exists, an existing data transfer period for the first device in the schedule is changed in a way that minimizes change to the schedule (see specification, page 7, lines 27-29; page 8, lines 7-8; step 518 of Figure 4).

The server receives a transmission over the network from the first device of the data actually stored in the first device (see specification, page 8, lines 9-10; step 520 of Figure 4). The transmission is received in accordance with the schedule resulting from said changing the existing data transfer period for the first device (see specification, page 7, lines 27-31; step 520 of Figure 4).

The server keeps track of an off-line device of the plurality of devices that is off-line and informs the off-line device of the off-line device's schedule for transferring data from the off-line device to the server as soon as the off-line device becomes on-line (see specification, page 5, lines 21-23).

The server receives information relating to GSM radio reception power over time by a another device of the plurality of devices (see specification, page 4, lines 21-23). The server estimates, based on the received information relating to the GSM power, times unsuitable for the another device to be connected to the server (see specification, page 4, line 35 - page 5, line 2).

The server forecasts a bandwidth of the network by monitoring current download activity from data transfers between the network and said server (see specification, page 5, lines 29-30).

The schedule is revised to achieve data transfer from the plurality of devices to the server at 80% of the forecasted bandwidth (see specification, page 5, lines 12-14).

The server changes the schedule in response to detecting that a device of the plurality of devices has run out of memory (see specification, page 5, lines 24-28).

The server determines when to upload new software from the server to the plurality of devices, taking into account a reduction in an effective communications bandwidth, said reduction resulting from the data transferred from the plurality of devices to the server (see specification, page 6, lines 3-8).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 13 and 17-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Airy et al. (U.S. Patent Application Publication No. 2002/0142780, hereinafter Airy), in view of Payne et al. (U.S. Patent No. 6,021,433, hereinafter Payne), Masseroni et al. (U.S. Patent Application Publication No. 2003/0054850, hereinafter Masseroni), Batson (U.S. Patent No. 5,844,327), Anderson II et al. (U.S. Patent No. 5,909,544, hereinafter Anderson), and Chefalas et al. (U.S. Application Publication No. 2002/0138786, hereinafter Chefalas).

2. Claims 18 and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Airy, Payne, Masseroni, Batson and Chefalas (hereinafter Airy et al.), as applied to claim 13 above, in further view of Eshet et al. (US. Patent No. 6,674,804, hereinafter Eshet).

ARGUMENT

GROUND OF REJECTION 1

Claims 13 and 17-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Airy et al. (U.S. Patent Application Publication No. 2002/0142780, hereinafter Airy), in view of Payne et al. (U.S. Patent No. 6,021,433, hereinafter Payne), Masseroni et al. (U.S. Patent Application Publication No. 2003/0054850, hereinafter Masseroni), Batson (U.S. Patent No. 5,844,327), Anderson II et al. (U.S. Patent No. 5,909,544, hereinafter Anderson), and Chefalas et al. (U.S. Application Publication No. 2002/0138786, hereinafter Chefalas).

Claim 13

Appellants respectfully contend that claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas because Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest each and every feature of claim 13.

A first example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "estimating, by the server, a corresponding future data transfer size of the data actually stored in the first device, said estimating being based on a historic data transfer size for data previously transferred from the first device to the server over the network".

The Examiner argues: "Airy discloses ... estimating, by the server, a corresponding future data transfer size of the data actually stored in the first device (paragraph [0053], lines 1-3), said estimating being based on a historic data transfer size for data previously transferred from the

first device to the server over the network (paragraph [0010], lines 20-22, *influences future schedules;* paragraph [0069], lines 4-7)".

In response, Appellants acknowledge that the Examiner is correct in stating that Airy, Par. [0053], lines 1-3 discloses "estimating, by the server, a corresponding future data transfer size of the data actually stored in the first device".

However, Airy's base transceiver station (which represents the claimed "server") NEVER estimates a future data transfer size of the data actually stored in subscriber unit (which represents the "first device") from a historic data transfer size of data previously transferred from the subscriber unit to the base transceiver station. Rather, the base transceiver station ALWAYS estimates a future data transfer size of the data to be subsequently transmitted by the subscriber unit to the base transceiver station from information encoded within a signal transmitted by the subscriber unit to the base transceiver station, as explained in Airy, Pars. [0051] - [0057] in conjunction with Airy, FIG. 5 which includes steps 510, 520, 530, 540, and 550.

For step 510, Airy, Par. [0052] discloses that the subscriber unit sends a Request to Send (RTS) signal to the base transceiver station, and that the RTS signal includes a Data Transmission Queue Size that represents the number of data blocks that the subscriber unit requires to be sent to the base transceiver station.

For step 520, Airy, Par. [0053] discloses that the base transceiver station sets the user queue size estimate associated with the subscriber unit to the Data Transmission Queue Size (of the subscriber unit) that is encoded in the RTS signal. Therefore in step 520, the base transceiver station estimates the future data transfer size from the Data Transmission Queue Size encoded in the RTS signal and not from a historic data transfer size from the subscriber unit.

For step 530, Airy, Par. [0054] discloses that the server generates a transmission

schedule.

For step 540, Airy, Par. [0055] discloses that the subscriber unit transmits data blocks to the base transceiver station in accordance with the transmission schedule generated in step 530. Each such transmitted data block includes encoded information reflecting the current data transmission queue value (or range of values) of the subscriber unit.

For step 550, Airy, Par. [0056] discloses that the base transceiver station updates the User Queue Size Estimate based upon the encoded information in the data blocks transmitted in step 540. Therefore in step 550, the base transceiver station determines the user queue size estimate (i.e., the future data transfer size) from the encoded information in the data blocks transmitted in step 540 and not from a historic data transfer size from the subscriber unit.

Appellants acknowledge that the encoded information in the data blocks may reflect a historical data transfer size from the subscriber unit. However, the determination of the encoded information inserted in the data blocks subsequently transmitted in step 540 is performed by the subscriber unit and not by the base transceiver station. Appellants note that claim 13 recites that the base transceiver station (i.e., the claimed server) must perform estimating the future data size based on a historical data transfer, which is not disclosed in Airy.

Thus, the base transceiver station NEVER estimates the future data transfer size based on a historic data transfer size and ALWAYS estimates the future data transfer size based on encoded information in a RTS signal or in a data block transmitted by the subscriber unit to the base transceiver station.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A second example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "determining, by the server, that a difference exists between the actual data transfer size and the corresponding estimated future data transfer size".

The Examiner has not addressed the preceding feature of claim 13 in the office action mailed October 21, 2008.

In the Advisory Action mailed January 12, 2009, the Examiner argues: "Airy discloses a discrepancy between actual and estimated data transfer sized in paragraph [0053] as updating the User Queue Size Estimated upon receiving the RTS".

In response, Appellants assert that the Examiner has incorrectly interpreted Airy, Par. [0053] which discloses that the base transceiver station sets the user queue size estimate associated with the subscriber unit to the received Data Transmission Queue Size (of the subscriber unit) that is encoded in the RTS signal. Airy, Par. [0053] does not disclose anything relating to "a difference exists between the actual data transfer size and the corresponding estimated future data transfer size".

Appellants also note from the illustrated example in Airy, FIG. 10, as described in Airy, Pars. [0083] that the Data Transmission Queue Size encoded in the RTS signal is 10 data blocks which are transmitted by the subscriber unit to the base transceiver station in time intervals transmit1, transmit2, and transmit3. The value of "10" encoded in the RTS signal is simply the total number of data blocks to transmit and is totally unrelated to "a difference exists between the actual data transfer size and the corresponding estimated future data transfer size".

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation

to claim 13.

A third example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: ***"responsive to said determining that said difference exists***, changing an existing data transfer period for the first device in the schedule in a way that minimizes change to the schedule" (emphasis added).

The Examiner argues: "Airy discloses ... responsive to said determining that said difference exists (paragraph [0050], lines 3-8), changing an existing data transfer period for the first device in the schedule (paragraph [0057], lines 6-9, *influencing subsequent transmission scheduling)* in a way that minimizes change to the schedule (paragraph [0008], lines 4-8, *minimizing the management of the transmission scheduling*)".

In response, Appellants acknowledge that Airy, Par. [0057], lines 6-9 discloses "changing an existing data transfer period for the first device in the schedule in a way that minimizes change to the schedule".

However, Airy, Par. [0050], lines 3-8 does not disclose that the claimed "changing an existing data transfer period ..." is "responsive to said determining that said difference exists". Appellants respectfully contend that Airy, Par. [0050], lines 3-8 does not mention anything about "changing an existing data transfer period ..." and therefore does not disclose that said "changing an existing data transfer period ..." is "responsive to said determining that said difference exists".

In the Advisory Action mailed January 12, 2009, the Examiner argues: "Airy discloses, in paragraph [0053], lines 5-8 that the schedule "sets" the queue according to updated transfer size information received from the subscriber unit, which is a result of the difference between

the actual and estimated data transfer sizes."

In response, Appellants assert that the Examiner has incorrectly interpreted Airy, Par. [0053] which discloses that the base transceiver station sets the user queue size estimate associated with the subscriber unit to the received Data Transmission Queue Size (of the subscriber unit) that is encoded in the RTS signal. Airy, Par. [0053] does not disclose anything relating to "a difference exists between the actual data transfer size and the corresponding estimated future data transfer size".

Appellants also note from the illustrated example in Airy, FIG. 10, as described in Airy, Pars. [0083] that the Data Transmission Queue Size encoded in the RTS signal is 10 data blocks which are transmitted by the subscriber unit to the base transceiver station in time intervals transmit1, transmit2, and transmit3. The value of "10" encoded in the RTS signal is simply the total number of data blocks to transmit and is totally unrelated to "a difference exists between the actual data transfer size and the corresponding estimated future data transfer size". Therefore, the Examiner's reliance on the existence of " difference exists between the actual data transfer size and the corresponding estimated future data transfer size" is misplaced.

Furthermore, the preceding feature of claim 13 recites that "changing an existing data transfer period ..." is "responsive to said determining that said difference exists", which the preceding argument in the Advisory Action mailed January 12, 2009 does not even address.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A fourth example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson,

Anderson and Chefalas does not teach or suggest the feature: "keeping track, by the server, of an off-line device of the plurality of devices that is off-line and informing the off-line device of the off-line device's schedule for ***transferring data from the off-line device to the server*** as soon as the off-line device becomes on-line" (emphasis added).

The Examiner argues that Payne, col. 11, lines 56-60 discloses the preceding feature of claim 13.

In response, Appellants cite Payne, col. 11, lines 56-60 which recites: "The information sources 12 thus provide the information basis for outgoing broadcast transmitted by the central broadcast server 34 through nationwide wireless broadcast network immediately or on a scheduled basis to both on- and off-line computers 14."

Appellants assert that the preceding quote from Payne, col. 11, lines 56-60 relates to data transfer from the server to the off-line device. In contrast, the preceding feature of claim 13 relates to data transfer from the off-line device to the server.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A fifth example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "receiving, by the server, information relating to GSM radio reception power over time by a another device of the plurality of devices and ***estimating ... times unsuitable for the another device to be connected to the server***".

The Examiner argues: "Airy discloses ... receiving, by the server, information relating to

reception power over time by a another device of the plurality of devices (paragraph [0013]; paragraph [0098]; paragraph [0103], lines 4-6) and estimating, by the server based on the received information relating to the power, times unsuitable for the another device to be connected to the server (paragraph [0096]; paragraph [0103])".

In response, Appellants respectfully contend that Airy, Pars. [0096] and [00103] is totally silent as to "estimating ... times unsuitable for the another device to be connected to the server".

In the Advisory Action mailed January 12, 2009, the Examiner argues: "Airy disclose in paragraph [0104] lines 1-5, such unsuitable times from the server connection as limiting the amount of subscribers per time slot, which is taken into account by the scheduler."

In response, Appellants notes that Airy, Par. [0104], lines 1-5 recites: "It is to be understood that the number of frequency blocks allocated per time slot is variable. An embodiment of the scheduler includes the scheduler taking into consideration constraints on the frequency bandwidth on either the up link or the down link transmission", which is totally silent as to "estimating ... times unsuitable for the another device to be connected to the server".

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A sixth example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "said server forecasting a bandwidth of the network by monitoring current download activity from data transfers between the network and said server".

The Examiner argues: "Airy discloses ... said server forecasting a bandwidth of the

network (paragraph [0104], lines 2-5) by monitoring current download activity from data transfers between the network and said server (paragraph [0104], lines 5-12)".

In response, Appellants respectfully contend that Airy, Par. [104] recites: "An embodiment of the scheduler includes the scheduler taking into consideration constraints on the frequency bandwidth on either the up link or the down link transmission. The frequency bandwidth allocations can be adjusted by varying the number of frequency blocks within a time slot. The frequency bandwidth allocated to a subscriber can be limited due to signal to noise issues, or the Federal Communication Committee (FCC) limitations. The scheduler can account for these limitations though allocations of frequency bandwidth through the scheduling."

Thus, Airy, Par. [104] discloses adjusting the frequency bandwidth by varying the number of frequency blocks within a time slot, which is not a disclosure of "forecasting a bandwidth of the network by monitoring current download activity from data transfers between the network and said server" as claimed.

Thus, Airy, Par. [104] discloses limiting the frequency bandwidth allocated to a subscriber due to signal to noise issues of FCC limitations, which is not a disclosure of "forecasting a bandwidth of the network by monitoring current download activity from data transfers between the network and said server" as claimed.

Thus, Airy, Par. [104] discloses allocating frequency bandwidth through the scheduling to account for said limiting the frequency bandwidth, which is not a disclosure of "forecasting a bandwidth of the network by monitoring current download activity from data transfers between the network and said server" as claimed.

In the Advisory Action mailed January 12, 2009, the Examiner argues: "Airy discloses in paragraph [0079], monitoring the current state of the network and concurrent transfers in an

effort to forecast bandwidth availability through taking a weighted average of the number or RTS retries to forecast the future number of subscriber units attempting communication and setting an forecasted loading level."

In response, Appellants note that the preceding argument by the Examiner depends on the assumption that failure of a RTS signal to be received at the base transceiver station is due to insufficient bandwidth rather than to some other reason, which Airy does not disclose. Appellants assert that failure of a RTS signal to be received at the base transceiver station may be due to various other causes such as the RTS signal being too weak, transmission media errors, etc.

Appellants note that Airy discusses bandwidth at various places in the patent (e.g., Pars. [0090], [0098], [0104]) but not in Par. [0079]. If Airy intended failure of a RTS signal to be received at the base transceiver station to be caused by insufficient bandwidth, then Airy would have identified insufficient bandwidth as a cause. Thus, the Examiner's assumption that failure of a RTS signal to be received at the base transceiver station is due to insufficient bandwidth is not persuasive.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A seventh example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "revising the schedule to achieve data transfer from the plurality of devices to the server at 80% of the forecasted bandwidth".

The Examiner argues that Batson, col. 7, lines 56-59 discloses the preceding feature of

claim 13 and that "It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Airy with the teachings of Batson. The motivation to combine being to increase the efficiency of the method operating by operating below maximum capacity".

In response, Appellants respectfully contend that the Examiner's stated motivation for modifying Airy to revising the schedule to operate at 80% of the forecasted bandwidth is not persuasive, because operating below 100% of the forecasted bandwidth decreases efficiency rather than increases efficiency.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13.

A eighth example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "changing, by the server, the schedule in response to detecting that a device of the plurality of devices has run out of memory".

The Examiner argues that Anderson, col. 4, lines 22-30 discloses the preceding feature of claim 13.

In response, Appellants cite Anderson, col. 4, lines 22-30 which recites: "It is an object of the invention to provide a system for tracking and scheduling of available resource computers connected in a network, including monitoring such parameters as, for example, the location, name, operating system, memory, speed, processor characteristics, memory capacity and other operational characteristics, of each resource computer, and using that information to allocate

those resource computers to run applications, such as for example, test applications and collect data, such as test data."

Appellants assert that the preceding quote from Anderson, col. 4, lines 22-30 discloses scheduling available resources which includes monitoring memory capacity. However, preceding quote from Anderson, col. 4, lines 22-30 does not disclose "changing... the schedule in response to detecting that a device ... has run out of memory" as claimed.

In the Advisory Action mailed January 12, 2009, the Examiner argues that Anderson "column 13, lines 3-5, disclose the adaptation of a schedule based on the resources, including whether a device has any available memory remaining".

In response, Appellants respectfully contend that the Examiner's stated motivation for modifying Airy to have the base transceiver station change the schedule in response to detecting that the subscriber unit has run out of memory is not persuasive, because the subscriber unit is not a resource of the base transceiver station. Appellants assert that a resource of the base transceiver station is a resource that the base transceiver station needs to support its operation or functionality, which the subscriber unit is not.

Therefore, the Examiner has not established a *prima facie* case of obviousness in relation to claim 13

A ninth example of why claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas is that Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas does not teach or suggest the feature: "determining, by the server, when to upload new software from the server to the plurality of devices, taking into account a reduction in an effective communications bandwidth, said reduction resulting from the data

transferred from the plurality of devices to the server".

The Examiner argues that "Chefalas discloses determining, by the server, when to upload new software from the server to the plurality of devices (paragraph [0034], lines 7-12), taking into account a reduction in an effective communications bandwidth, said reduction resulting from the data transferred from the plurality of devices to the server (paragraph [0034], lines 32-40)... It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Airy with the teachings of Chefalas. The motivation to combine being, to increase the efficiency of the method by up-loading software during periods when there is available bandwidth."

In response, Appellants respectfully contend that the Examiner's stated motivation for modifying Airy by the alleged teaching of Chefalas, Par. [0034] is not persuasive, because the Examiner has misinterpreted the teaching of Chefalas, Par. [0034]. Appellants assert that Chefalas, Par. [0034] discloses alternatively delivering a software product to a user by shipping the software product to the user instead of electronically delivering the software product to the user if the software product is to large for the bandwidth required for electronic delivery. Chefalas, Par. [0034] does not disclose waiting to deliver the software product electronically until there is available bandwidth for enabling an electronic delivery of the software product. Therefore, the teaching of Chefalas, Par. [0034] is not applicable to Airy and does not support the Examiner's stated motivation for modifying Airy by the alleged teaching of Chefalas, Par. [0034].

Based on the preceding arguments, Appellants respectfully maintain that claim 13 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas, and that

claim 13 is in condition for allowance.

Claim 17

Since claims 17 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §102(e), Appellants maintain that claims 17 is likewise not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

Claim 18

Since claims 18 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §102(e), Appellants maintain that claims 18 is likewise not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

In addition, the Examiner has not presented any argument in support of the rejection of claim 18 over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a). Therefore, the Examiner has not established a *prima facie* case of obviousness to support the aforementioned rejection of claim 18.

Accordingly, claim 18 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

Claim 19

Since claims 19 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35

U.S.C. §102(e), Appellants maintain that claims 19 is likewise not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

Claim 20

Since claims 20 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §102(e), Appellants maintain that claims 20 is likewise not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

In addition, the Examiner has not presented any argument in support of the rejection of claim 20 over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a). Therefore, the Examiner has not established a *prima facie* case of obviousness to support the aforementioned rejection of claim 20.

Accordingly, claim 20 is not unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §103(a).

GROUND OF REJECTION 2

Claims 18 and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Airy, Payne, Masseroni, Batson and Chefalas (hereinafter Airy et al.), as applied to claim 13 above, in further view of Eshet et al. (US. Patent No. 6,674,804, hereinafter Eshet).

Claim 18

Since claim 18 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §102(e), Appellants maintain that claim 18 is likewise not unpatentable over Airy, Payne, Masseroni, Batson, Anderson and Chefalas, and further in view of Eshet under 35 U.S.C. §103(a).

Claim 20

Since claim 20 depends from claim 13, which Appellants have argued *supra* to not be unpatentable over Airy in view of Payne, Masseroni, Batson, Anderson and Chefalas under 35 U.S.C. §102(e), Appellants maintain that claim 20 is likewise not unpatentable over Airy, Payne, Masseroni, Batson, Anderson and Chefalas, and further in view of Eshet under 35 U.S.C. §103(a).

SUMMARY

In summary, Appellants respectfully requests reversal of the October 21, 2008 Office Action rejection of claims 13 and 17-20.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Volker Fricke et al. | Group Art Unit: 2457 / Conf. # 6714

Application No.: 10/552,230 | Examiner: Rubin, Blake J.

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Title: METHOD AND SYSTEM FOR DATA LOGGING

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APPENDIX A - CLAIMS ON APPEAL

13. A data logging method that utilizes a schedule of data transfer periods during which data is transferred from a plurality of devices to a server over a network, said method comprising for a first device of the plurality of devices:

obtaining, by the server, from the first device a communication of an actual data transfer size of data actually stored in the first device;

estimating, by the server, a corresponding future data transfer size of the data actually stored in the first device, said estimating being based on a historic data transfer size for data previously transferred from the first device to the server over the network, said schedule currently being based on the historic data transfer size for the first device;

determining, by the server, that a difference exists between the actual data transfer size and the corresponding estimated future data transfer size;

responsive to said determining that said difference exists, changing an existing data transfer period for the first device in the schedule in a way that minimizes change to the schedule;

receiving, by the server, a transmission over the network from the first device of the data actually stored in the first device, said transmission being received in accordance with the schedule resulting from said changing the existing data transfer period for the first device;

keeping track, by the server, of an off-line device of the plurality of devices that is off-line and informing the off-line device of the off-line device's schedule for transferring data from the off-line device to the server as soon as the off-line device becomes on-line;

receiving, by the server, information relating to GSM radio reception power over time by a another device of the plurality of devices and estimating, by the server based on the received information relating to the GSM power, times unsuitable for the another device to be connected to the server;

said server forecasting a bandwidth of the network by monitoring current download activity from data transfers between the network and said server;

revising the schedule to achieve data transfer from the plurality of devices to the server at 80% of the forecasted bandwidth;

changing, by the server, the schedule in response to detecting that a device of the plurality of devices has run out of memory;

determining, by the server, when to upload new software from the server to the plurality of devices, taking into account a reduction in an effective communications bandwidth, said reduction resulting from the data transferred from the plurality of devices to the server.

17. The method of claim 13, wherein said actually updating does not change an order of the devices in the schedule.

18. The method of claim 13, wherein the actual data transfer size exceeds the corresponding estimated future data transfer size and said actually updating comprises replacing the existing data transfer period of the first device in the schedule with a data transfer period of a second device of the plurality of devices, and wherein a duration of the data transfer period of the second device in the schedule is less than a duration of the new data transfer period of the first device.

19. The method of claim 13, wherein the actual data transfer size for the first device exceeds the corresponding future estimated data transfer size for the first device and said actually updating comprises having the new data transfer period for the first device begin at an earlier time in the schedule.

20. The method of claim 13, wherein the actual data transfer size for the first device is less than the corresponding estimated transfer size for the first device so as to create a free time slot in the schedule and said actually updating comprises filling the free time slot with a data transfer period of a second device of the plurality of devices.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Title: METHOD AND SYSTEM FOR DATA LOGGING

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APPENDIX B - EVIDENCE

There is no evidence entered by the Examiner and relied upon by Appellants in this appeal.

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APPENDIX C - RELATED PROCEEDINGS

There are no proceedings identified in the "Related Appeals and Interferences" section.